

ORIGINAL

Decision No. 84315

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HIGHWAY CARRIERS
ASSOCIATION on behalf of DANIEL
F. PFEIFER dba CENTRAL MOBILE
HOME MOVERS, for hearing of
Finance and Accounts Division
Audit No. 6069.

Application No. 54563
(Filed January 8, 1974)

Milton W. Flack, Attorney at Law, and Don B. Shields
for Highway Carriers Association, and Daniel F.
Pfeifer, for himself, applicant.
J. C. Kaspar and Herbert W. Hughes, for California
Trucking Association, interested party.
Ted H. Peceimer, for the Commission staff.

O P I N I O N

The Finance and Accounts Division of the Commission determined in Audit No. 6069 that revenue derived by D. F. Pfeifer (Pfeifer), dba Central Mobile Home Movers, during the calendar years 1971 and 1972 from the disassembly of mobile homes prior to transportation of the mobile homes by him and revenue derived by Pfeifer from setting up mobile homes subsequent to transportation of the mobile homes by him, is subject to the transportation rate fund fee.

The Highway Carriers Association, acting on behalf of Pfeifer, filed this application requesting that the Commission review the determination made by the Finance and Accounts Division in Audit No. 6069.

Public hearing on the application was held before Examiner Cline in Los Angeles on March 18, 1974. The matter was taken under submission on June 5, 1974, the date of the filing of the brief by applicant.

Issues

1. Is revenue obtained by Pfeifer from the disassembly of mobile homes prior to transportation of the mobile homes by him subject to the transportation rate fund fee?

2. Is revenue obtained by Pfeifer from setting up mobile homes subsequent to transportation of the mobile homes by him subject to the transportation rate fund fee?

Discussion

It was agreed by the Commission staff and Pfeifer that gross revenues derived by Pfeifer solely from the transportation of mobile homes are subject to the transportation rate fund fee and that gross revenues derived by Pfeifer solely from contracting work on mobile homes in which Pfeifer did not perform transportation are not subject to the transportation rate fund fee.

Pfeifer, who holds a radial highway common carrier permit issued by this Commission, transports mobile homes in the Southern California area for manufacturers, dealers, and private parties.

Pfeifer also holds a State of California contractor's license to do business as a contractor for mobile home installations and engages in the disassembly and preparation of mobile homes for travel prior to transporting the mobile homes, and in the reassembly and setup of the mobile homes for occupancy after transporting the mobile homes.

Disassembly may involve taking the roof cap and all the molding off, separating the mobile home into two sections, jacking the two units apart with rollers, and covering up the open side of the halves with plywood or plastic to keep the weather out and to prevent the furniture from falling onto the road.

The setup of the mobile home includes the removing of the plywood or plastic siding, leveling and joining of the two halves of the mobile home, setting the units on piers, bolting the roof together, putting on the roof cap, sealing the roof with roof sealer, checking the rest of the roof for leaks, and hooking up the water, gas, and electricity. The plumbing is checked to see if there are leaks and if the water is flowing properly through the pipes, the electrical sockets and plugs are checked with special testers to make sure there are no shorts and that they all work, and the gas outlets are checked for leaks. Carpet padding and carpet are laid if so ordered.

The disassembly and setup of work require a contractor's license and the work is performed by special crews who operate from pickup trucks which are used to carry the workmen and their tools and mobile home supplies to and from the units. These workmen do not perform any of the transportation services.

The transportation functions by Pfeifer are performed by drivers who do not engage in the setting up or dismantling services. The transportation services commence when the drivers arrive with the toters or tractors at the location of the mobile home units for the purpose of transporting the mobile homes and terminate upon completion of delivery and receipt by the consignee. The transportation services by these drivers include preparing the inside of the mobile home by taping to make sure it is safe to transport the mobile home, connecting the mobile home to the tractor, hooking up the safety chains, turn signals, brake lights, and clearance lights, putting on the breakaway switch, mirrors, flags, wide-load signs, and transporter plate, checking the tires and lugs to make sure they are tight, and airing and repairing the tires whenever necessary. At the destination the procedure is reversed. The mobile home is disconnected from the tractor, the safety chains, turn signals,

brake lights, and clearance lights are unhooked, and the breakaway switch, mirrors, flags, wide-load signs, and transporter plates are taken off. The two units are parked as close together as possible so that no one can steal things, but they are not physically joined.

The charges for the transportation services are determined and set by Minimum Rate Tariff 18.

Invoice No. 1277, which is for assembling a coach described as Southwood 24 x 63 S-8844 at the Point Dume Club, Malibu, shows a total charge for these services of \$581. Invoice No. 1141, which is the freight bill for shipping two Southwood 12 x 63 halves from Boise Cascade, Santa Fe Springs to Point Dume Club, Malibu, shows freight charges of \$70.80 per half plus \$9.40 for an L.A. County permit for each half, totaling \$160.40 for the complete unit.

Invoice No. 1926 billed to S & W Mobile Homes Sales involves a full-service policy for assembly of a mobile home for which the charge was \$750. Pfeifer performed no transportation service in connection with this mobile home. The 90-day service policy which is a part of the full-service assembly includes:

1. Pre-factory inspection
2. Setup and carpet installation
3. Detailing - complete cleaning
4. 2 sets of lot steps
5. Inspection with customer - sign off to dealer
6. 90-day full service - dealer responsibility
7. Roof leaks - one year
8. Factory warranty - one year.

Invoice No. 1050 involved the movement of a Flamingo 12 x 55 mobile home for Gene Thomas Trailer Sales from Sunburst Mobile Home Park, Chatsworth to the Gene Thomas Lot, Modesto. The charge for the 416-mile movement was \$244.00 plus \$7.50 for putting air in the tires, \$3.50 for repairing a tire, and \$9.40 for the L.A. County permit or a total of \$264.40. There were no contracting services in connection with the transportation of this mobile home.

During the period of the audit Pfeifer owned two of the set-up trucks worth approximately \$10,000. The other set-up trucks were owned by the workmen. Pfeifer also had six power units (5-ton diesel mobile home toters) worth approximately \$25,000 used for hauling the mobile homes. Exhibit No. 3 is a personnel list of Pfeifer which lists five drivers, six set-up men, four office personnel, one carpet layer, one retailer, and one serviceman.

Audit No. 6069 for the year 1971 shows net operating revenue per books of \$229,840.60 and net operating revenue reported for the transportation rate fund fee of \$87,466.48, leaving a difference of \$142,374.12 of which \$142,366.00 is for set-up labor. The audit report for the year 1972 shows net operating revenue per books of \$408,822.72 and net operating revenue reported for the transportation rate fund fee of \$69,005.00, leaving a difference of \$339,817.72 of which \$338,873.00 is for set-up labor.

The staff witness testified that Pfeifer received gross operating revenues during the year 1972 of \$518,180. This amount represents three accounts: \$338,873 for set-up labor as stated in the paragraph above, \$66,660 for materials, and \$112,647 for hauling. From the \$112,647 Pfeifer subtracted \$42,692 for subhauling and \$950 for private property hauling, leaving a balance of \$69,005 subject to the transportation rate fund fee which is also shown in the paragraph above.

In its closing statement the California Trucking Association points out that the record discloses a need for further Commission consideration of certain related and residual questions:

1. Is applicant operating as a shipper or carrier (TR 62)?
2. If a shipper, should the 100 percent subhaul rule be applied or established (TR 65)?
3. Should a reaudit be made to determine liability for subhaul revenues (TR 74)?
4. Should a further audit be made on the basis of changed operations (TR 67)?

These issues raised by California Trucking Association go beyond the application of Pfeifer and will not be decided herein.

Sections 5001 and 5002, Chapter 6 (Transportation Rate Fund and Fees) of the Public Utilities Code provide:

"5001. This chapter is enacted for the purpose of correlating and regulating the rates charged for the transportation of property by the various transportation agencies in the state subject to the jurisdiction of the commission and for the purpose of creating a special fund to administer and enforce the acts conferring upon the commission jurisdiction to regulate the rates of transportation agencies carrying property for compensation and to administer and enforce the Highway Carriers' Act.

"5002. 'Gross operating revenue' as used in this chapter includes all revenue derived from the transportation of property having origin and destination within this state, except revenue derived from the transportation of such property in interstate or foreign commerce or from the transportation of vehicles by ferries."

Section 209 of the Public Utilities Code reads:

"209. 'Transportation of property' includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and handling, and the transmission of credit by express corporations."

Minimum Rate Tariff 18 applies to the transportation involved in this proceeding. Item 210 of this tariff reads as follows:

"In addition to all other applicable rates and charges named in this tariff the following charges shall be assessed by the carrier for special services involved in preparing each trailer for transportation and/or preparing each trailer coach for occupancy."

Pfeifer's counsel contends that the special services are those services performed only during the time the transportation is in process and must be included and connected with transportation. He relies on In re Adams, dba Adams Trucking Co., et al., (1970) 71 CPUC 187.

In the Adams case the transportation performed by applicants was primarily that of wallboard and related building materials from suppliers to building construction sites. Applicants also performed a service known as stocking. Applicants sought authority to deviate from accessorial charges set forth in Minimum Rate Tariffs 2 and 5 in connection with stocking services. In describing the operation, the Commission stated:

"The wallboard is delivered to the construction site and unloaded from the truck on the ground. The stocking team of two or more men along with a forklift, and sometimes a truck, take the required number of pieces of wallboard and place them in designated spots in the specified rooms of the buildings under construction. Applicants state that the stocking is a highly skilled operation requiring trained and specialized personnel.

"The record shows that the transportation of the wallboard from supplier to the jobsite is paid for by the shipper, and that the stocking service is paid for by the building contractor. One of the applicants testified that they had been asked by the contractors to provide the trucking service so as to insure a more dependable schedule of delivery to meet construction schedules. Applicants state that at times stocking is performed by an applicant that did not perform the transportation, or that a particular applicant would perform the transportation but not the stocking. Also, stocking may be performed by other contractors who perform no transportation services and thus are not subject to regulation by the Commission. Also, according to the record, when the same applicant performs both the transportation and stocking, usually different personnel and equipment are used."

The Commission, in ruling upon the application for deviation and in determining the issue as to whether stocking was a transportation service stated:

"It is clear from the particular facts in this case that the operation of stocking is separate and distinct from the transportation of wallboard and related building materials to the jobsite.

"In view of the evidence produced herein, the Commission finds that the stocking services as performed by applicants are not part of the transportation services also performed by applicants, and are thus not subject to the accessorial charges named in the minimum rate tariffs. We further find that such stocking services are a completely different service and in no way connected with the transportation of wallboard and other building materials handled by applicants and are not subject to the jurisdiction of the Commission."

Counsel for Pfeifer also points out that in Bekins Van Lines v State Board of Equalization, (1964) 62 Cal 2d 84, the court found that the carrier's revenue from certain collateral services was not revenue from transportation of property for purposes of the motor vehicle transportation license tax. In that case the court held that receipts from storage in transit, as well as those from intracity pickup and delivery to and from such storage, fell within the municipal exemption and were not taxable under the Motor Vehicle Transportation Tax Law. On the other hand, the court held that the warehouse handling charges for carrying household goods into a warehouse if storage in transit between cities was in the city of destination, or out of the warehouse if such storage was in the city of origin, are taxable under the Motor Vehicle Transportation License Tax Law.

Both the California Trucking Association and the staff rely on Decision No. 70919 (decision on rehearing) in Cases Nos. 5432, 5435, and 5439, In re House Moving Contractors Association, (1966) 65 CPUC 730. In that case the Commission found:

"(1) The moving of houses over the public highways for compensation is transportation of property, and the carrier of such is a highway carrier within the meaning of Section 3511 of the Public Utilities Code.

"(2) Accessorial services rendered by highway carriers prior to and subsequent to the actual movement of houses are subject to the jurisdiction of this Commission.

"(3) The public interest does not require on the basis of the record in this case, that this Commission establish minimum rates for house moving in that portion of Southern California sought for such regulation by Association (House Moving Contractors Association)."

This decision was signed by two Commissioners. The third Commissioner concurred in the results but did so upon the ground that the regulation sought was beyond the jurisdiction of the Commission. Two Commissioners dissented without stating their grounds.

In Decision No. 79296, In re Armored Transport, Inc. and Valley Armored Transport, Inc., (1971) 72 CPUC 554, Writ of Review denied (California Supreme Court, No. 29962), the Commission found that coin wrapping performed by carriers transporting coins is an accessorial service subject to the transportation rate fund fees. The coin-wrapping service was physically performed by the carriers' office employees and the charges for the coin-wrapping service were recorded and billed separately from the charges for the transportation. In this regard the Commission said:

"The fact that the employees of applicant who perform the coin wrapping are assigned exclusively to this duty, that the charges therefor are separately stated and that coin can be transported loose does not make this a separate and distinct service entirely unrelated to transportation. It is the type of service that is traditionally offered in connection with the transportation of coin, and one that would logically be expected by those customers who desire it."

In Operations of W. H. Burke and Co., Inc., et al., (1972)

74 CPUC 267, the Commission found:

"3. The primary business of applicants is the assembly of knocked-down motorcycles. The transportation of assembled motorcycles from point of assembly to dealers is incidental to said primary business and is within the scope and furtherance thereof."

Section 3549 of the Public Utilities Code reads as follows:

"3549. Any person or corporation engaged in any business or enterprise other than the transportation of persons or property who also transports property by motor vehicle for compensation shall be deemed to be a highway carrier for hire through a device or arrangement in violation of this chapter unless such transportation is within the scope and in furtherance of a primary business enterprise, other than transportation, in which such person or corporation is engaged."

The Commission concluded that the transportation of assembled motorcycles which is incidental to the assembly service performed by applicants is exempt under Section 3549 of the Public Utilities Code.

The staff contends that in the case at hand, it is clear that disassembly and setup of mobile homes is a natural and necessary part of the carrier's transportation service requested by the shipper who desires a complete service, that these accessorial services occur as a result of the request of the shipper and the basic transportation service provided by the carrier, and that the services are directly incidental to and are performed in conjunction with the carrier's primary business of transportation.

The Commission agrees with the staff. The Adams case, supra, is not applicable because the stocking service is performed independently of the transportation service. The transportation

service is performed for and paid by the shipper, but the stocking service is performed for and paid by the contractor. In the Bekins Van Lines case, supra, certain services were not subject to tax because they fell within the municipal exemption. No such exemption is involved in this proceeding.

We rely on the reasoning of the House Moving Contractors Association case, supra, even though a majority of the Commission in that case did not make a finding that the accessorial services rendered by highway carriers prior to and subsequent to the actual movement of houses are subject to the jurisdiction of the Commission. The Armored Transport, Inc. case, supra, is clearly a case in point with this proceeding.

The Burke and Co., Inc. case, supra, is distinguishable because the transportation of assembled motorcycles was incidental to the primary business of the assembly of knocked-down motorcycles. Burke and Co., Inc. did not transport motorcycles which it did not assemble. The record in this case clearly shows that Pfeifer transports mobile homes whether or not he disassembles and sets them up.

Findings

1. Pfeifer is a radial highway common carrier engaged in the transportation of mobile homes over the public highways for compensation.

2. The disassembly services performed by Pfeifer prior to the transportation of mobile homes by Pfeifer are services in connection with or incidental to the transportation of property by Pfeifer, and the revenue obtained by Pfeifer for such services is subject to the transportation rate fund fee.

3. The set-up services performed by Pfeifer subsequent to the transportation of mobile homes by Pfeifer are services in connection with or incidental to the transportation of property by Pfeifer, and the revenue obtained by Pfeifer for such services is subject to the transportation rate fund fee.

4. Revenue obtained by Pfeifer solely from the contracting work of disassembly and assembly on mobile homes where Pfeifer did not transport the mobile homes on the public highways for transportation is not subject to the transportation rate fund fee.

Conclusion

Audit No. 6069 of the Finance and Accounts Division should be revised to conform to the findings set forth above.

O R D E R

IT IS ORDERED that:

1. Audit No. 6069 of the Finance and Accounts Division shall be revised to provide that:

- a. Revenue obtained by Daniel F. Pfeifer for disassembly services on mobile homes performed by Pfeifer prior to the transportation of the mobile homes by Pfeifer is subject to the transportation rate fund fee.
- b. Revenue obtained by Pfeifer for the transportation of mobile homes is subject to the transportation rate fund fee.
- c. Revenue obtained by Pfeifer for set-up services performed on mobile homes by Pfeifer at destinations subsequent to the transportation of the mobile homes by Pfeifer is subject to the transportation rate fund fee.

- d. Revenue obtained by Pfeifer for the contracting work of disassembly and assembly on mobile homes where Pfeifer has not transported the mobile homes on the public highways for compensation is not subject to the transportation rate fund fee.

2. Except as provided in Ordering Paragraph 1 above, the application is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th
day of APRIL, 1975.

Vernon L. Stevenson
President
William J. Quinn
Robert J. Quinn
Leonard K. Quinn
Robert J. Quinn
Commissioners